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IN THE

Supreme Court of the United States

OCTOBER TERM, 1970

No. ~~1394~~ 70-63

NATIONAL LABOR RELATIONS BOARD, *Petitioner*

v.

PLASTERERS' LOCAL UNION No. 79, OPERATIVE PLASTERERS' AND CEMENT MASONS' INTERNATIONAL ASSOCIATION, AFL-CIO, ET AL.

No. ~~1931~~ 70-65

TEXAS STATE TILE & TERRAZZO CO., INC., MARTINI TILE & TERRAZZO CONTRACTORS ASSOCIATION OF AMERICA, INC., *Petitioners*

v.

PLASTERERS' LOCAL UNION No. 79, OPERATIVE PLASTERERS' AND CEMENT MASONS' INTERNATIONAL ASSOCIATION, AFL-CIO, ET AL.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

BRIEF FOR RESPONDENT PLASTERERS' LOCAL UNION NO. 79 IN OPPOSITION

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1970

No. 1184

NATIONAL LABOR RELATIONS BOARD, *Petitioner*

v.

PLASTERERS' LOCAL UNION NO. 79, OPERATIVE PLASTERERS' AND CEMENT MASONS' INTERNATIONAL ASSOCIATION, AFL-CIO, ET AL.

No. 1231

TEXAS STATE TILE & TERRAZZO CO., INC., MARTINI TILE & TERRAZZO CONTRACTORS ASSOCIATION OF AMERICA, INC., *Petitioners*

v.

PLASTERERS' LOCAL UNION NO. 79, OPERATIVE PLASTERERS' AND CEMENT MASONS' INTERNATIONAL ASSOCIATION, AFL-CIO, ET AL.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

BRIEF FOR RESPONDENT PLASTERERS' LOCAL UNION NO. 79 IN OPPOSITION

This consolidated Opposition to the Petitions of the Solicitor General acting on behalf of the National Labor Relations Board (hereinafter "NLRB" or

"Board") in No. 1184 and Texas Tile and Terrazzo Co., Inc., *et al.* in No. 1231 is filed by Respondent, Plasterers' Local Union No. 79.

OPINIONS BELOW

The opinion of the court of appeals (App. A,[1] 21-63) is not yet officially reported. The decision and order of the Board in the unfair labor practice proceeding (App. C, 68-80) are reported at 172 NLRB No. 77. The Board's earlier decision and determination of dispute (App. D, 81-94) are reported at 167 NLRB 185.

JURISDICTION

The judgment of the court of appeals (App. B, 64-65) was entered on June 30, 1970. The Board's timely petition for rehearing *en banc* was denied on October 1, 1970 (App. B, 66-67). The jurisdiction of this Court is invoked by the Board under 28 U.S.C. 1254(1).

QUESTION PRESENTED

If the Court grants the Petition, Respondent accepts the "Question Presented" as posited by the Solicitor General in No. 1184.

STATUTE INVOLVED

The relevant provisions of the National Labor Relations Act, as amended (61 Stat. 136, 29 U.S.C. 151 *et seq.*) are set forth in the Petition in No. 1184 at pp. 2 and 3.

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[1] "App. —" refers to appendices A, B, C and D to the Petition of the Solicitor General. "A" refers to the appendix to the briefs in the court below.

STATEMENT

A. The Underlying Dispute and the Attempts of the Plasterers To Settle It

With the following changes and additions, the Respondent accepts the "Statement" of the Solicitor General.

After the Plasterers[2] were unsuccessful in convincing the Tile Setters[3] on the Anderson Library job that the brown coat of mortar should be installed by Plasterers, they submitted the dispute to the National Joint Board for Settlement of Jurisdictional Disputes, Building and Construction Industry (hereinafter, the "Joint Board"), a voluntary private tribunal consisting of union and employer representatives and established for the sole purpose of settling jurisdictional disputes in the construction industry (App. D, 84; A. 54-55).

On November 9, 1966, the Joint Board awarded the disputed work to the Plasterers, except it provided that if tile is to be set the same work day the coat of mortar is installed, the mortar coat is to be installed by Tile Setters (App. A, 25; A. 411, 412). Both the Plasterers and Tile Setters are bound by decisions of the Joint Board by virtue of their membership in the Building and Construction Trades Department of the AFL-CIO (App. A, 31; A. 405, 406).

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[2] Local Union No. 79, Operative Plasterers' and Cement Masons' International Association.

[3] Tile, Terrazzo and Marble Setters Local Union No. 20 of the Bricklayers, Masons, and Plasterers International Union. For convenience, "Plasterers" and "Tile Setters" will refer to the respective unions and the employees they represent.

For two and one-half months after receipt of that decision, the Plasterers attempted to get the Tile Setters and Texas State to comply with the Joint Board award and assign the work to them, but these requests, though peaceful, were rejected (App. C, 72; A. 33, 34, 47, 413-417). Finally, as a last resort, on January 24, 1967, the Plasterers picketed the Texas State jobsite with a sign stating:

> "Plasterers Local 79 protest the refusal of Texas State Tile and Terrazzo to comply with the National Joint Board. Local Union 79 does not intend by this picket line to induce or encourage the employees of any other employer to engage in a strike or concerted refusal to work." (App. C, 72). (Emphasis added)

The Tile Setters claimed they did not fully understand the Joint Board award. Therefore, in March, 1967, the Plasterers requested the Joint Board to clarify its earlier award (App. A, 26; A. 415, 418-423). The Joint Board, on March 15, 1967, clarified its award with a detailed exposition of the work belonging to each trade under any circumstance (App. A, 26; A. 424-426). Both the Plasterers and Tile Setters submitted evidence to and argued orally before the Joint Board but the employer, although invited to participate, refused (A. 307, 308, 409, 412, 418).

The decision of the Joint Board did not award the Plasterers all the work that was claimed. The Joint Board recognized "the problems created by having two different trades working at the same time on separately identifiable work operations" and awarded some of the work to Tile Setters "in the interest of efficient operation" (App. A, 26; A. 424, 425). The

Plasterers honored its commitment to the Joint Board and accepted its decision (A. 420, 421). The Tile Setters refused to comply with the Joint Board's clarification.

B. National Labor Relations Board Proceedings

In its Section 10(k) decision, the Board devoted exactly one footnote to the "Question Presented" here which is characterized by the Solicitor General as "an important and recurring one in the administration of the Act" (App. D, 88; Br. 19).

The Board, in a decision which did not discuss the legal or policy reasons for rejecting the two-union "parties" argument of the Plasterers, affirmed the employers' assignments.[4]

C. The Decision of the Court of Appeals

The court of appeals (Judges Leventhal and McGowan, with Judge MacKinnon dissenting) refused to enforce the Board's order. The court found that the Board lacked authority under 10(k) "to determine the merits of a jurisdictional dispute between two unions when the unions had agreed on a method for binding arbitration of their disputes,"—here, the Joint Board (App. A, 32). The court held that under 10(k) an employer is not a party to the jurisdictional dispute and therefore he is not indispensible to the voluntary adjustment mechanism.[5]

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[4] The Board's decision on the Section 8(b)(4)(D) phase of the case was basically a repetition of its earlier 10(k) decision (App. C, 74-76).

[5] In view of its ruling, the court did not have to reach the actual merits of the jurisdictional dispute between the unions (App. A, 23, n. 3).

ARGUMENT

I. There Is No Conflict Among the Circuits and the Issue Presented Is Not Ripe for Review

A clear reason for denying the Petitions at this time is that the issue is simply not yet appropriate for review by this Court.

The Board and its supporters imply, with varying degrees of intensity, that the decision of the court below conflicts with the decisions of other circuits. This is incorrect. As the court of appeals stated, "in any meaningful sense," this question is "one of first impression in the federal courts" (App. A, 33). In fact, while the Board *now* claims several circuit court opinions "have heretofore accepted the Board's view" (Br. 12), the Board "candidly admit[ted to the court below] that these cases have no more than 'adverted to' the issue before [the court] and contend[ed] merely that they 'reflect' its view" (App. A. 34, 35, n.11).

A review of the Board's cited cases supports the court's view that this case was one of first impression. In *NLRB* v. *Local 825, Int'l. Union of Operating Engineers,* 410 F. 2d 5 (3rd Cir. 1969), rev'd on other grounds ... U.S. ..., 27 L. Ed. 2d 398 (1971), the unions *and* the employer were stipulated to the Joint Board. In *New Orleans Typographical Union No. 17* v. *NLRB,* 368 F. 2d 755 (5th Cir. 1966), there was no agreement between the unions for a voluntary adjustment of their dispute. The court in *NLRB* v. *Local 825, Int'l. Union of Operating Engineers,* 326 F. 2d 213 (3rd Cir. 1964), found that only one of the *unions* involved in the dispute had agreed to the voluntary adjustment of the dispute. Finally, *Local 450, Int'l. Union of Operating Engineers* v. *Elliott,* 256 F. 2d 630 (5th Cir. 1958) was an appeal from a 10(1) injunction

where the court did not have to reach this issue. The issue raised here was not litigated or discussed by the courts in these cases.[6]

Actually, the only other Court which has discussed the issue presented here and approached the issue in light of the fresh imprint of this Court's opinion in *National Labor Relations Board* v. *Radio and Television Broadcast Engineers' Union hereinafter* "CBS", 364 US 573 (1961), is in agreement with the analysis of the court below:

> "[T]he Supreme Court [in *CBS*] view[s] the policies of § 10(k) as directed towards inducing voluntary settlement between the groups of employees involved, but also the language of that section would seem to compel it." *Penello* v. *Local Union No. 59, Sheet Metal Workers Int'l. Ass'n.*, 195 F. Supp. 458, 466 (D. Del. 1961) (App. A, 42, 43).

Commentators, including the American Bar Association's joint labor-management "Committee on the Building and Construction Industry", also agree with the reasoning of the court of appeals on this issue. The Committee's Report stated:

> "By the term 'parties' those legislators who discussed the matter indicated that Congress means the disputing unions themselves. Nowhere in the legislative history is there any indication that Congress sought to require employer participation in this agreed upon method of adjustment of the dispute. . . ." Report, *ABA Section of Labor Relations Law*, pp. 452, 457 (1965).[7]

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[6] *Quinn* v. *National Labor Relations Board*, 61 LRRM 2690 (D.C. Cir. 1966) (concurring op. of Chief Judge Bazelon) was also cited by the Board. The lower court fully explained its inapplicability to the question here (App. A, 47, n. 25).

[7] The same view was expressed in Sussman, *Section 10(k): Mandate For Change?* 1967 B.U.L. Rev. 201, 229.

In sum, then, there is no conflict of authority between the circuits on this issue. As we show *infra*, Judge Leventhal's opinion is imminently correct on the merits and there is a substantial probability that other circuits passing on the issue will agree with the court below. If this substantial probability is borne out, there will be no need for this Court to review the issue. Furthermore, the work giving rise to the instant dispute has long been completed (App. D, 93) and thus no current harm will be done to the parties to these Petitions if this Court defers review of the issue until it is ascertainable whether there will be any conflict among the circuits.

II. The Decision of the Court of Appeals Is Correct

An equally sound reason for denying the Petitions is that the court of appeals' decision is the only result consistent with the plain meaning of the Act, the legislative history, and the policies that 10(k) were intended to effectuate.

The court of appeals' 28-page opinion is a detailed and exhaustive analysis of the issue raised here. The court holds that the NLRB may not assert jurisdiction under Section 10(k) if the two unions (or groups of employees) involved in a jurisdictional dispute have agreed upon a voluntary adjustment procedure for settlement of the dispute. According to the court, this voluntary adjustment procedure may not be frustrated by an employer who refuses to participate in the procedure even though invited. The court was guided by this Court's opinion in *CBS* and the result reached is demanded by those policy considerations which prompted Congress to enact Section 10(k). Review in the instant case is therefore unwarranted for the Peti-

tioners are simply attempting to reopen basic policy questions closed in *CBS*.

1. One of the principal reasons which the NLRB proffers for this Court accepting certiorari is that the decision below overturns 23 years of consistent Board interpretation of the meaning of "parties" (Br. 10). But this argument hoists the Board on its own petard. All must agree that *CBS* totally rejected the basic premise upon which the Board had administered Section 10(k) since 1948. Yet as the court below recognized (App. A, 43), since *CBS* the Board has not analyzed its interpretation of "parties" with a view to whether or not that interpretation comports with the teaching of *CBS*. In the absence of such a re-analysis, the Board's interpretation of "parties" *necessarily rests on its pre-CBS doctrine* of the meaning and purpose of Section 10(k).[8] Thus, not only is the Board's "consistency" deserving of no special weight, but its obedience to "consistency" highlights the nature of the Board's error.[9]

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[8] As the court below recognized, "If there was room for doubt prior to *CBS* [regarding the definition of "parties"], that decision should have alerted the Board to modify its interpretation." (App. A, 41).

[9] The Board's consistency, as the court below pointed out is illusory. (App. A, 47). Under its own *Safeway* doctrine it quashes the notice of 10(k) hearing when one union renounces any claim to the work in dispute even though the employer still demands a hearing. *Highway Truckdrivers and Helpers, Local 107, Int'l. Bhd. of Teamsters (Safeway Stores, Inc.)*, 134 NLRB 1320 (1961). Similarly in *Local 1905, Carpet Linoleum and Soft Tile Layers (Butcher and Sweeney Const. Co.)*, 143 NLRB 251 (1963) the Board, *over the protest* of the employer, quashed a notice of 10(k) hearing when the disputing unions settled their dispute. See *Local 1102 United Brotherhood of Carpenters (Port Huron Sulphite and Paper Co.)*, 140 NLRB 79 (1962).

2. Notwithstanding *CBS* the Board still argues (Br. No. 11) that a 10(k) "dispute" really means a dispute between an employer and a union striking to obtain a work assignment and therefore, in the Board's view, the employer must be a "party" to any voluntary method of adjustment of the dispute. This is contrary to the plain meaning of the statute. As this Court stated in *CBS*:

> "[T]he clause 'the dispute out of which such unfair labor practice shall have arisen' can have no other meaning except a jurisdictional dispute under § 8(b)(4)(D) *which is a dispute between two or more groups of employees over which is entitled to do certain work for an employer.*" 364 U.S. at 579 (Emphasis added) (App. A, 36, 37).

The Board's argument also flies in the face of the last sentence of Section 10(k) (significantly omitted from the Board's quote (Br. No. 11)). That sentence states, "Upon compliance by the parties to the dispute with the decision of the Board or upon such voluntary adjustment of the dispute, such charge shall be dismissed." Since it is conceded that the employer is under no legal compulsion to comply with either a Board award or a voluntary adjustment between the unions (Bd. Br. 18), while *the unions* must comply in order to have the unfair labor practice charge dismissed, it irresistibly follows that only the unions are the "parties" to the dispute (App. A, 33).

3. Little need be said with regard to the Board's contention (and that of its supporters) that the decision below is inconsistent with legislative history (Br. 16). As Judge Leventhal recognizes, the opposite conclusion is the only one reasonably drawn from a review of the Congressional history of Section 10(k) (App. A, 38-

41). This Court in *CBS* analyzed the legislative history of Section 10(k) and its interpretation of the abstention provision of Section 10(k) was necessarily based upon that legislative history:

> "§ 10(k) offers strong inducement to quarrelling unions to settle their differences by directing dismissal of unfair labor practice charges upon voluntary adjustment of jurisdictional disputes." 364 U.S. at 577.

While Section 10(k) was not in the House Bill, H.R. 3020, the definition of a "jurisdictional dispute" as contained in Committee Reports, and as stated by President Truman, Senator Taft and several other members of both Houses [10] provided the framework for Senator Morse's proposed Section 10(k). For example, the House Report on H.R. 3020 stated:

> "Jurisdictional strikes usually involve quarrels, not between employers and employees, but between rival unions, . . ." H. Rep. No. 245 on H.R. 3020 (I Leg. Hist. 292, 315).

Also typical is President Truman's statement to Congress in 1947 that, "if the 'rival unions are unable to settle [jurisdictional] disputes themselves, provision must be made for peaceful and binding determination of the issues'." 364 U.S. at 580. Senator Murray, in urging adoption of Section 10(k) as proposed by Senator Morse stated:

> "We are confident that the mere threat of governmental action will have a beneficial effect in stimu-

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[10] 93 Cong. Rec. 136; II Legislative History of the Labor Management Relations Act, 1947, 1012 (Sen. Taft) (hereinafter, "Leg. Hist."); I Leg. Hist. 583 (Rep. Landis); H. Repr. No. 245 on H.R. 3020 (I Leg. Hist. 292, 315). See also II Leg. Hist. 1056 (Sen. Ellender) and I Leg. Hist. 615 (Rep. Hartley).

lating labor organizations to set up appropriate machinery for the settlement of such controversies within their own ranks, where they properly should be settled." II Leg. Hist. 1046; see also Sen. Min. Rep. No. 105 on S.1126; I Leg. Hist. 463, 480. (App. A, 41).[11]

4. Moreover, the Board and its supporters misconstrue the opinion of the court of appeals. The court did not hold, as the Board claims "that an employer is necessarily a neutral party in a jurisdictional dispute" (Br. 14.) The court held that an employer has standing to obtain a Section 10(k) hearing before the Board when he is faced with two disputing unions who cannot agree upon the proper assignment of the work. A Section 10(k) hearing is not warranted, however, merely because the employer is dissatisfied with the *way* the unions reach the settlement of their dispute.

Under the Board's reasoning, the employer is not just a "party", but a super party. The employer can wait to see the result of Joint Board proceeding (refusing to participate); then if the award does not accord with his own Motion, he refuses to assign the work to the prevailing union, files a Section 8(b)(4)(D) charge and takes a second bite at the apple in a Board 10(k) hearing. If the Labor Board does not go

[11] The Board's attempted rationalization of Senator Morse's statement regarding the scope of Section 10(k) (Br. 17) rests on a faulty premise. The very situation the Senator described which gave rise to the policy of the War Labor Board (and which he incorporated into Section 10(k)) involved a *strike* over a work assignment. II Leg. Hist. 983. It seems pointless to argue, as does the Board (Br. 17), that the unions, prior to a strike, are the "parties" to the dispute and can settle it without the employer, but then if one of the unions strikes to enforce that settlement, the Board won't recognize it because the employer wasn't involved.

along with him (a rare occurrence indeed), the employer simply ignores the Board's decision as well.[12]

But, it is the NLRB, not Congress, that is according employers such extraordinary rights. The clear Congressional intent was to insulate employers from the fallout of inter-union jurisdictional quarrels; it accomplished this in Section 10(k) by assuring "that at least the employer would not be plagued by the failure of the disputing unions to resolve their dispute." (App. A, 33).

The fears of disruption in the construction industry which the Board and the *amici* conjure up as a result of the lower court's decision are simply unfounded. Their own briefs demonstrate as much. This Court has not been informed of any widespread strike activity in support of Joint Board decisions or even of an unusual number of jurisdictional disputes since the opinion below was issued. The sole support for the rhetoric of disruption is that five lawsuits under Section 301 of the Act have been filed seeking enforcement of Joint Board awards (Lab. Br. 4); this *peaceful* and nondisruptive way to settle disputes would seem to cut against

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[12] Contrary to the Board, as a "practical matter," the employer is not "under compelling pressure" to accept a 10(k) determination. (Br. 18, 19) Under Board policy, during the long Board 10(k) and 8(b)(4)(D) proceedings, the employer is insulated from strike activity by a Section 10(1) injunction obtained by the NLRB. As this case demonstrates, by the time the 10(k) decision is issued the work involved will generally be completed and the dispute academic. (App. A, 34-36, App. D, 84, 93). Even when the prevailing union in a 10(k) case can take economic action against a construction employer, under the NLRB's strict common situs picketing rules of *Sailors' Union of the Pacific (Moore Dry Dock)*, 92 NLRB 547 (1950), such action is severely restricted to insure that it does not violate the secondary boycott provisions of the Act. See *Local 761 IUE* v. *NLRB (General Electric)*, 366 U.S. 667.

the Board's position.[13] If anything, the lower court's opinion has already had a calming influence on unions involved in jurisdictional disputes. Furthermore, the NLRB's intervention in at least one of those lawsuits (*Plumbers' Local 157* v. *Laborers' Local 204, et al,* C.A. No. 70-C-109 (D.S.D. Ind.) suggests that other facets of this issue have not yet crystallized.

Other policy arguments of the Board and its supporters are equally unpersuasive. The lower court's opinion does not interfere with the Board's *Spielberg* doctrine of deferring to arbitration. *Spielberg Mfg. Co.,* 112 NLRB 1080 (1955) (Lab. Br. 13). As Judge Leventhal patiently explained, the court's reasoning adopts the general principle of *Carey* v. *Westinghouse Corp.,* 375 U.S. 261 (1964), that "full scope should be given to voluntary arbitration procedures" (App. A, 45). Furthermore, the court below recognized that if the interunion voluntary adjustment procedures are subject to some "infirmity" or are just "paper agreements," the Board has discretion to reject them (App. A, 48, 49). That protection is adequate and that is not the situation here (App. A, 49).

Finally, no one, including the court below, denies that employers have an interest in the resolution of jurisdictional disputes. The Board and its supporters argue that a Joint Board decision could well upset established bargaining relationships, increase the costs to the employer, require him to employ different employees, etc.

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[13] The lower court's view on the peaceful enforcement of Joint Board awards under Section 301 of the Act is nothing new. In similar situations relief has been granted in suits between unions under Section 301 to enforce decisions of the AFL-CIO No Raiding Pact, *United Textile Workers of America* v. *Textile Workers Union of America,* 258 F. 2d 743 (7th Cir., 1958).

(Bd. Br. 14; Texas St. Br. 14; Lab. Br, 10, 16; AGC Br. 12),—but these considerations apply equally when the Board decides a jurisdictional dispute in a Section 10(k) proceeding. In any event, such considerations are plainly irrelevant to the issues presented in this case.[14]

III. The Operation of the Joint Board Is Not an Issue in This Case

Although the *amici* supporting the Board[15] and the Petitioner Texas State argue that the court below was wrong in its interpretation of the word "parties," their real attack is directed at the Joint Board.[16] For example, the *amici* supporting the Board allege that the

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[14] Actually the only rationale the Board can offer in support of its interpretation of "parties" is its discredited pre-*CBS* approach that the employer has an absolute right to assign work as he sees fit. This Court in *CBS* rejected that rationale:

> "[S]uch a narrow determination would leave the broader problem of work assignments in the hands of the employer, exactly where it was before the enactment of § 10(k)—with the same old basic jurisdictional dispute likely continuing to vex him, . . ." 364 U.S. at 579.

[15] The Board and the Title Contractors' Ass'n., petitioned below for rehearing *en banc*, at which time several groups, including the Laborers' International Union and the Associated General Contractors, supported the request. Their Petitions were denied. None of the *amici curiae* supporting the Board participated in the court below until this petition for rehearing was filed, even though the existence of the case was well known to at least the Laborers and AGC. Further, the Tile Setters, who prevailed before the Board but lost in the court of appeals, has not filed a petition for certiorari or brief supporting the Board in this Court.

[16] This point is emphasized by the fact that although the lower court's opinion clearly applies to any inter-union voluntary method of settlement, it is only construction industry employers who have seen fit to enter the case.

Joint Board criteria is somehow unfair to employers and does not consider their interests in deciding disputes (Tex. St. Br. 18; AGC Br. 16).[17]

The problem with all these arguments is that they are not directed to the question presented by either Petition. As Judge Leventhal pointed out in his opinion, no contention was made by any party below that the Joint Board did not properly have jurisdiction to decide the instant dispute or that "the general operation of the Joint Board plan or . . . its handling of this particular inter-union dispute" was subject to "infirmity." (App. A, 49, 48, 31, n. 10). Texas State and the supporting *amici* are trying to use their dissatisfaction with the Joint Board—a dissatisfaction not shared by the preponderance of employers in the building and construction industry[18]—to show the statute should not be interpreted in conformity with Congressional intent. The Joint Board, however, *is* involved in the five or six court cases which the *amici* state have recently been filed, and it would appear desirable to give that litigation a chance to proceed so all issues will be in proper perspective for this Court should a conflict among the circuits eventually develop.

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[17] Contrary to the Board and the supporting *amici*, the fact that employers are included in the Joint Board structure does not have any effect on the meaning and proper interpretation of Section 10(k) (Br. 14, 15). The presence of employers on the Joint Board actually supports the lower court because it guarantees that employers' viewpoints will be heard and considered.

[18] The Building and Construction Trades Department, AFL-CIO, is simultaneously filing a motion for leave to file a memorandum *amicus curiae* supporting this Respondent's Opposition. Since that Memorandum discusses various aspects of the Joint Board and the stability the decision below will bring to the construction industry, these matters will only be touched upon lightly here.

Also, the issues of the Joint Board agreement and its procedures are in reality simple contract questions readily resolved by lower courts in routine Section 301 suits. Unless those courts prove unable to handle these issues, this Court with its crowded docket should not burden itself with issues which have not traversed the lower court route.

It is suggested that the issue presented here should "percolate" in the lower courts until all phases have been explored and the application of the court's decision to varying factual patterns becomes clearly discernible.

CONCLUSION

The petitions for writs of certiorari in Nos. 1184 and 1231 should be denied.

Respectfully submitted,

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